

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 00-35**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Application of the business tax to a service provider in Tennessee or [STATE OTHER THAN TENNESSEE].

SCOPE

Revenue rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue rulings are advisory in nature and are not binding on the Department.

FACTS

Pursuant to the United States Department of Agriculture regulations, raw fluid milk sales are made directly from the producer to the processor. The producer is the individual dairy farmer, and the processor is the plant converting the raw fluid milk into a form for sale and distribution to the consumer. Each producer engages its own trucker, who actually picks up the milk at the farm and delivers it to the processor. The processor is liable to pay the producer for all raw fluid milk that meets the requirements of the Grade A Pasteurized Milk Ordinance and that is delivered to it by the producer. Pursuant to United States Department of Agriculture regulations, the processors pay for deliveries of the raw milk twice each month.

The taxpayer is planning to locate in Tennessee or in [STATE OTHER THAN TENNESSEE]. The taxpayer would be paid a fee for coordinating the deliveries of raw fluid milk from various dairy farmers to the various plants on a daily basis and for maintaining the bookkeeping records referred to in the regulations as a "producer payroll." This responsibility includes receiving a lump-sum payment from the plant for the deliveries made in the previous period and distributing the amount due to each individual dairy farmer. The taxpayer would be paid a fee based upon the amount of raw fluid milk delivered.

The taxpayer's business would be a service for producers. The payments to the taxpayer would be taken out of the regular payments by the processors twice per month. Because the full amount otherwise would be due to the producers, the payments to the taxpayer would be made by the producers. The producers also would pay the truckers for the deliveries of the milk to the processors. Although the taxpayer would engage in a limited amount of fieldwork, most of the work would be done in the taxpayer's office.

The taxpayer would never have either title to or possession of any raw fluid milk. Title to the raw fluid milk passes from the producer to the processor when the processor receives it. The majority of the taxpayer's gross sales would come from the fees it receives for coordinating deliveries of raw fluid milk.

QUESTIONS

1. Would the taxpayer be exempt from the business tax based upon transactions which are "direct from the farm," pursuant to Tenn. Code Ann. § 67-4-712(c)(1) under the facts given?
2. Would the business tax be imposed if the taxpayer maintained its offices in [STATE OTHER THAN TENNESSEE], with the only physical presence within Tennessee being occasional field staff visits to either dairy farms or processing plants in Tennessee?
3. Would the business tax be based upon the total value of milk delivered directly from producers to processors or upon the amount of fees received by the taxpayer?
4. Would the business tax apply to deliveries made from a producer located in Tennessee to a processor located in Tennessee?
5. Would the business tax apply to deliveries made from a producer located in Tennessee to a processor located outside of Tennessee?
6. Would the business tax apply to deliveries made from a producer located outside of Tennessee to a processor located in Tennessee?
7. Would the business tax apply to deliveries made from a producer located outside of Tennessee to a processor located outside of Tennessee?
8. Have all counties in Tennessee adopted the business tax?
9. Would the imposition of any business tax payable by the taxpayer be dependent upon the location (county in Tennessee) of producers, processors, or the taxpayer's office, if in Tennessee?

10. Is the business tax dependent upon any other criteria?
11. Would the business tax be paid in each county in which a producer is located, in each county in which the processor is located, or in the county in which the taxpayer's office is located, if in Tennessee?
12. What is the business tax rate?

RULINGS

1. No. The taxpayer is a service provider and would be subject to the business tax on that basis. The cited exemption would not apply under the given facts.
2. No. If the taxpayer locates its office in [STATE OTHER THAN TENNESSEE] and performs the service in [STATE OTHER THAN TENNESSEE], it would not be subject to the business tax.
3. The business tax would be based upon the amount of fees received by the taxpayer.
4. If the taxpayer's office were located in Tennessee, the business tax would apply. Otherwise, it would not apply under the given facts.
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6. If the taxpayer's office were located in Tennessee, the business tax would apply. Otherwise, it would not apply under the given facts.
7. If the taxpayer's office were located in Tennessee, the business tax would apply. Otherwise, it would not apply under the given facts.
8. No. Not all counties in Tennessee have adopted the business tax.
9. The imposition of any business tax payable by the taxpayer would be dependent upon the location of the taxpayer's office, if in Tennessee.
10. Yes. The business tax is dependent upon other criteria. The Department declines to answer this question further, because the question is too broad.
11. The business tax would be paid in the county and in the municipality in which the taxpayer's office is located, if in Tennessee.

12. The rate of business tax for a service provider is one eighth (1/8) of 1% of the taxpayer's retail sales. Under the facts given, all of the taxpayer's sales would be retail sales. There is a minimum tax of \$15.00 per location, but there also is a credit for that amount if more than the minimum is due from the taxpayer. Counties and municipalities can impose a reduced rate, and some do.

ANALYSIS

1. The business tax includes the following exemption: "The gross sales made in this state of livestock, horses, poultry, nursery stock and other farm products direct from the farm are exempt from the tax levied by this part; provided, that such sales are made directly by the producer, breeder, or trainer." Tenn. Code Ann. § 67-4-712(c)(1).

This exemption would not apply under the given facts, because the taxpayer would not be making sales directly from the farm. The taxpayer would be charging fees for the coordination of deliveries. The exemption does not apply to such fees.

The taxpayer would be taxed under the business tax on the basis of its "dominant business activity." Tenn. Code Ann. § 67-4-708. "Dominant business activity" is defined as "the business activity which is the major and principal source of gross sales at retail and the major and principal source of gross sales at wholesale of the business[.]" Tenn. Code Ann. § 67-4-702(a)(4). The dominant business activity of the taxpayer would be the fees it would charge for the coordination of deliveries of raw fluid milk.

Classification 3 of the business tax applies to (among other things) "[e]ach person making sales of services or engaging in the business of furnishing or rendering services[.]" Tenn. Code Ann. § 67-4-708(3)(C). Many services are dealt with specifically in the business tax statute, but all other services are covered by classification 3. Because the taxpayer would be a service provider that is not enumerated specifically, it would be subject to the business tax under classification 3. Tenn. Code Ann. § 67-4-708(3)(C).

2. If the taxpayer locates its business in [STATE OTHER THAN TENNESSEE], it would not be subject to the business tax. The business tax is applied in those localities in which the business activity is "carried on." Tenn. Code Ann. § 67-4-704. Under the facts given, the business activity would be the coordination of deliveries rather than the deliveries themselves. Such coordination of deliveries would occur at the location of the taxpayer's office. If the office in which the coordination of deliveries occurs were located in [STATE OTHER THAN TENNESSEE], the business tax would not apply.

3. The business tax would apply to the amount of fees received by the taxpayer. Tenn. Code Ann. § 67-6-709(b)(3)(A).

4. - 7. The location of the producer or of the processor would not matter, because the business tax would apply to the location in which the coordination of the deliveries occurs, rather than to the locations of the deliveries themselves. The coordination of the deliveries would occur at the taxpayer's office or offices.

It should be noted that not all service businesses are taxed at the location of the business office. If the business is "carried on" outside of the office, the tax is due where the business is "carried on." Tenn. Code Ann. § 67-4-704.

8. Not all Tennessee counties have adopted a business tax. Clay, Claiborne, and Morgan Counties have not adopted a business tax. However, the municipality of Oliver Springs within Morgan County has adopted a business tax.

Although the question asks about counties, municipalities also have the authority to impose the business tax. Tenn. Code Ann. § 67-4-704. Therefore, the business tax may be due to both the county and the municipality, depending upon the particular location.

9. The imposition of any business tax payable by the taxpayer would be dependent upon the location of the taxpayer's office, if in Tennessee.

Every person taxable under this part shall, prior to engaging in business ..., register with the county clerk, in the case of taxes owed to the county, and with the city official designated as the collector of tax by city charter or ordinance, in the case of taxes owed to a municipality. Tenn. Code Ann. § 67-4-706(a).

If the taxpayer were to open multiple locations, business tax would be due for each separate location. Tenn. Comp. R. & Regs. 1320-4-5-.28(1). If the taxpayer were to extend its operations into other counties or municipalities without establishing a place of business, all taxable sales would be subject to the business tax in the county and the municipality in which the established place of business is located. Tenn. Comp. R. & Regs. 1320-4-5-.28(2).

10. The business tax is dependent upon other criteria. The Department declines to answer this question further, because the question is too broad.

11. The business tax would be paid in the county and in the municipality in which the taxpayer's office is located. Tenn. Code Ann. § 67-4-715.

12. The rate of tax for classification 3 is one eighth (1/8) of 1% of all retail sales of the taxpayer. Tenn. Code Ann. § 67-4-709(b)(3)(A). A separate rate of one fortieth (1/40) of 1% of all wholesale sales would not apply under the facts given.

Tenn. Code Ann. § 67-4-709(b)(3)(B). The minimum business tax for each of the taxpayer's locations would be \$15.00. Tenn. Code Ann. § 67-4-709(a). However, the taxpayer may claim a credit for the minimum tax, if its tax burden otherwise would exceed the minimum due. Tenn. Code Ann. § 67-4-713(a)(2). "Each county and/or incorporated municipality may reduce the rates of taxation set forth in § 67-4-709 for any or all classifications taxable by such county and/or incorporated municipality." Tenn. Code Ann. § 67-4-710.

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APPROVED: Ruth E. Johnson
Commissioner of Revenue

DATE: 10/3/00